

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO.: 4: 19-CV-00111-D

**WILLIAM HARRIS and PHYLLIS
HARRIS,**

Plaintiffs,

v.

**MARY JANE VANDERBURG,
DOUGLAS MATTHEW
GURKINS, REMCO EAST, INC.,
and MARY GRACE BISHOP,**

Defendants.

**JOINT MOTION TO EXCUSE
PHYSICAL PRESENCE AT
COURTHOUSE FOR COURT-
HOSTED MEDIATED
SETTLEMENT CONFERENCE**

The parties, through their respective counsel, move this Court pursuant to Local Civil Rule 101.2(d) to modify any attendance requirement to excuse all necessary parties, their respective counsel, and other representatives from physical attendance at the court-hosted settlement conference at the courthouse and to allow for such participation to be made by remote means. Defendant Douglas Matthew Gurkins (Gurkins) also requests by way of this motion to participate in his mediation through his attorney only. In support of this motion, the parties show:

1. This is an action brought by the Plaintiffs William and Phyllis Harris, an elderly Black American couple, to recover injunctive and monetary relief under the federal Fair Housing Act, 42 U.S.C. § 3604 et seq. (FHA) and associated state law claims for race harassment and discrimination. Gurkins was William and Phyllis Harris's neighbor and is the alleged harasser. Defendant Mary Jane Vanderburg (Vanderburg) is the aunt of Gurkins and owner of the leased premises at issue in Greenville, North Carolina. Defendant Remco East, Inc. (Remco) was the property management company hired by Vanderburg to manage the leased premises and Defendant Mary Grace Bishop (Bishop) was the employee of Remco East at all times alleged in the First Amended Complaint.

2. Plaintiffs William (age 77) and Phyllis Harris (age 64) reside in Greenville, North Carolina. Their counsel is based Pescadero, California and Winterville, Williamston, and Raleigh, North Carolina.

3. Defendant Vanderburg is in her seventies and resides in Greenville, North Carolina. Her counsel is based in New Bern, North Carolina.

4. The United States, by and through the United States Attorney for the Eastern District of North Carolina, filed a criminal action against Gurkins, *United States v. Douglas Matthew Gurkins*, Case No. 2:20-cv-0031-BO, for criminal interference with a fair housing right based on race, 42 U.S.C. §3631. On or about August 6, 2020, Gurkins pled guilty to this charge and was taken into custody in

Raleigh, North Carolina. Gurkins's sentencing hearing is set to take place on or about November 17, 2020. Throughout that matter and the civil one, Gurkins has been represented by Mr. Joseph Dupree, who is based in Greenville, North Carolina.

5. Remco and Bishop are represented by the same counsel based in Wilmington, North Carolina. Bishop resides in Manteo, North Carolina. Remco's other representative is based in Greenville, North Carolina and its insurance carrier adjuster is based in Raleigh, North Carolina.

6. The parties have agreed that all necessary parties, their respective attorneys, and other representatives are available for the settlement conference on the following dates: Monday, October 12, 2020; Friday, October 16, 2020; and Monday, October 19, 2020 and have filed contemporaneously with this motion a separate notice informing the Court of these dates.

7. The current pandemic we are now experiencing, coronavirus disease 2019 ("COVID 19") is a rapidly changing situation and there is much uncertainty. Given what we do know about the COVID-19 and how it spreads easily from person to person, multiple medical reporting as well the Centers for Disease Control and Prevention ("CDC") recommends limiting human contact, known as "social distancing." *See also, Standing Order of Chief United States District Judge Terrence W. Boyle, 20 SO 5, "In Re: Court Operations Under The Exigent*

Circumstances Created by the COVID-19 Pandemic” (E.D.N.C. March 18, 2020).

The CDC also reports as of the filing of this motion that older adults are experiencing the most severe illness resulting from COVID-19; such persons and those with underlying health conditions are at an increased risk. The CDC also reports that indoor spaces are more risky than outdoor spaces as it may be harder to keep people apart in indoor spaces and there’s less ventilation.

8. This CDC reporting is directly relevant to this case since at least three parties (Plaintiffs and Defendant Vanderburg) are over the age of sixty with two parties being in their seventies (Plaintiff William Harris and Defendant Vanderburg). The court-hosted settlement conference will be occurring indoors for possibly a sustained amount of time.

9. For these reasons, the parties agreed to seek permission from this Court to allow all necessary parties, their respective attorneys, and other representatives to attend the settlement conference by remote means. In the event the Court is amenable to this request, if needed, the parties have agreed to split the costs charged by a third party-vendor, Huseby, to coordinate and support the court-hosted mediation conducted remotely.

10. Given Gurkins’s present circumstances, he requests that his physical presence be excused from the mediated settlement conference, even by remote

means, and that he participate through his attorney only. The other parties to this matter do not object to Gurkin's request.

Wherefore the parties respectfully move this Court to excuse the physical presence of all necessary parties, their respective attorneys, and other representatives at the courthouse of the court-hosted mediated settlement conference and to allow them to attend by remote means. Defendant Gurkins also respectfully requests to be excused from attending this conference and to participate through his counsel only.

Dated: September 30, 2020.

Respectfully submitted,

/s/ Kelly Anne Clarke

Kelly Anne Clarke, NC Bar No. 28188
Ayanda Dowtin Meachem, NC Bar No. 37714
Luis Juan Pinto, NC Bar No. 53823
Legal Aid of North Carolina, Inc.
2101 Angier Avenue, Suite 300
Durham, NC 27703
Tel: (919) 865-3825
Fax: (919) 861-1887
kellyc@legalaidnc.org
ayandam@legalaidnc.org
luisp@legaidnc.org

/s/ Christopher Brancart

Christopher Brancart
Brancart & Brancart
P.O. Box 686
Pescadero, CA 94060
Tel: (650) 879-0141
Fax: (650) 879-1103
cbrancart@brancart.com
CA Bar No. 128475
[By Special Appearance]

Attorneys for Plaintiffs

/s/ Spencer Beard

Spencer Beard, NC Bar No. 31747
Luke Dalton, NC Bar No. 41188
McAngus Goudelock & Courie

/s/ Joseph B. Dupree, II

Joseph B. Dupree, II
Law Office of Joseph B. Dupree, II
123 West 3rd Street

P.O. Box 12327
Wilmington, NC 28405
Tel: (910) 726-1610
Fax: (910) 920-9157
spencer.beard@mgclaw.com
luke.dalton@mgclaw.com

Greenville, NC 27835
Tel: (252) 329-0993
Fax: (252) 329-0444
jaybdupree@gmail.com
NC Bar No. 19904

Attorneys for Defendants Remco East and Bishop Attorney for Defendant Gurkins

/s/ A. Ruthie Sheets

A. Ruthie Sheets
Harris, Creech, Ward, & Blackerby
325 Pollack Street
P.O. Drawer 1168
New Bern, NC 28563
Tel: (252) 638-6666
Fax: (252) 638-3542
ars@harriscreech.com
NC Bar No. 52397

/s/ Jay C. Salsman

Jay C. Salsman
Harris, Creech, Ward & Blackerby
325 Pollack Street
P.O. Drawer 1168
New Bern, NC 28563
Tel: (252) 638-6666
Fax: (252) 638-3542
jcs@harriscreech.com
NC Bar No. 34187

Attorneys for Defendant Vanderburg

CERTIFICATE OF SERVICE

I hereby certify on this date the foregoing JOINT MOTION TO EXCUSE PHYSICAL PRESENCE AT COURTHOUSE FOR COURT-HOSTED MEDIATED SETTLEMENT CONFERENCE was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

A. Ruthie Sheets and Jay C. Salsman

Harris, Creech, & Blackerby

Email: ars@harriscreech.com

Email: jcs@harriscreech.com

Counsel for Defendant Mary Jane Vanderburg

Spencer Beard and Luke Dalton

McAngus Goudelock & Courie

Email: spencer.beard@mgclaw.com

Email: luke.dalton@mgclaw.com

Counsel for Defendants Remco East, Inc. and Mary Grace Bishop

Joseph B. Dupree, II

Law Office of Joseph B. Dupree, II

Email: jaybdupree@gmail.com

Counsel for Defendant Douglas Matthew Gurkins

Christopher Brancart, Brancart and Brancart

Ayanda Downtin Meachem and Luis Juan Pinto

Legal Aid of North Carolina, Inc.

Email: cbrancart@brancart.com

Email: ayandam@legalaidnc.org

Email: luisp@legalaidnc.org

Counsel for Plaintiffs William and Phyllis Harris

This the 30th day of September, 2020.

/s/ Kelly Anne Clarke